

REMARKS

In the final Office Action, the Examiner:

- rejects claims 1-10 and 15-20 under 35 U.S.C. § 103(a) as allegedly unpatentable over ERICKSON et al. (U.S. Patent No. 6,882,765; hereinafter ERICKSON) and WALTERS et al. (U.S. Patent Application Pub. No. 2002/0176131; hereinafter WALTERS);
- rejects claim 11 under 35 U.S.C. § 103(a) as allegedly unpatentable over CHIU et al. (U.S. Patent Application Pub. No. 2002/0063916) and WALTERS; and
- rejects claim 12-14 under 35 U.S.C. § 103(a) as allegedly unpatentable over CHIU, WALTERS, and ERICKSON.

Applicant traverses this objection and these rejections.

By way of this amendment, Applicant proposes amending claims 1, 6, 11, 15, and 16 to improve form and canceling claims 2-5, 7-10, 12-14, and 17-20 without prejudice or disclaimer. No new matter is added. Claims 1, 6, 11, 15, and 16 will be pending upon entry of this amendment.

Rejection under 35 U.S.C. § 103(a) based on ERICKSON and WALTERS

Pending claims 1, 6, 11, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over ERICKSON and WALTERS. Applicant respectfully traverses this rejection.

Amended independent claim 1 recites a method comprising providing, in an optical network, an optical cross-connect system (OXC) having a working port and a

spare port; providing a router having a working port to transmit or receive high priority data to or from the working port of the OXC and a protection port to transmit or receive low priority data to or from the spare port of the OXC; detecting a failure in the router; sending an out-of-band signal from the router to the OXC, via an Internet Protocol address associated with the OXC, where the signal indicates the failure of the router; causing the working port of the OXC to connect to the protection port of the router in response to detection of the out-of-band signal, where the transmission of low priority data to or from the router is preempted by the transmission of the high priority data to or from the router, in response to the failure of the router; and transmitting the high priority data from the router to the OXC via the protection port. Applicant submits that ERICKSON and WALTERS, whether taken alone or in any reasonable combination, do not disclose or suggest one or more features of claim 1.

For example, ERICKSON and WALTERS do not disclose or suggest sending an out-of-band signal from a router to an OXC, via an Internet Protocol address associated with the OXC, where the out-of-band signal indicates the failure of the router, as recited by claim 1. This feature is similar to (yet possibly of different scope than) a feature recited by now canceled claim 5. With respect to claim 5, the Examiner relies on col. 19, lines 1-9 of ERICKSON for allegedly disclosing, "addressing the out-of-band signal to an Internet protocol address associated with the OXC." (Final Office Action, p. 12.) Without acquiescing in the rejection of previously presented claim 1, Applicant submits that ERICKSON and WALTERS do not disclose or suggest the above-identified feature of amended claim 1.

Col. 19, lines 1-9 of ERICKSON discloses:

Referring now to FIG. 15, client equipment (also referred to previously herein as attached network equipment) 1502 is coupled to an optical cross-connect switch (OXC) 1504 by means of the optical connections or working optical links 1506. Examples of client equipment 1502 include internet protocol (IP) routers, Synchronous Optical Network (SONET) terminals, add/drop multiplexers as well as additional optical cross-connect switches and other optical networking equipment.

This section of ERICKSON merely discloses that client equipment may include an IP router. This section of ERICKSON does not disclose or suggest sending an out-of-band signal from a router to an OXC, via an Internet Protocol address associated with the OXC, where the out-of-band signal indicates the failure of the router, as recited by amended claim 1. In fact, this section of ERICKSON does not even mention sending an out-of-band signal to an Internet Protocol address associated with an OXC. If the Examiner maintains this rejection, Applicant requests that the Examiner specifically point out where ERICKSON discloses or suggests sending an out-of-band signal from a router to an OXC, via an Internet Protocol address associated with the OXC, where the out-of-band signal indicates the failure of the router, as recited by amended claim 1.

The disclosure of WALTERS does not cure the deficiencies in the disclosure of ERICKSON, as set forth above.

For at least the foregoing reasons, Applicant submits that amended claim 1 is patentable over ERICKSON and WALTERS, whether taken alone or in any reasonable combination. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of amended claim 1 under 35 U.S.C. § 103(a) based on ERICKSON and WALTERS.

Independent claims 6 and 15 recite features similar to (yet possibly of different scope than) features described above with respect to amended claim 1. Therefore, Applicant submits that claims 6 and 15 are patentable over ERICKSON and WALTERS, whether taken alone or in any reasonable combination, for at least reasons similar to the reasons set forth above with respect to amended claim 1. Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of amended claims 6 and 15 under 35 U.S.C. § 103(a) based on ERICKSON and WALTERS.

Claim 16 depends from claim 15. Therefore, Applicant submits that claim 16 is patentable over ERICKSON and WALTERS, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to amended claim 15.

Rejection under 35 U.S.C. § 103(a) based on CHUI and WALTERS

Claim 11 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over CHUI and WALTERS. Applicant respectfully traverses this rejection.

Amended claim 11 recites an optical cross-connect system, located in an optical network, the optical cross-connect system comprising a spare port to transmit low priority data to or from a router that is external to the optical cross-connect system; and a working port to transmit high priority data to or from a primary router that is external to the optical cross-connect system, where the working port is connected to the router in response to receiving, from the primary router, an out-of-band signal indicating a failure of the primary router, via an Internet Protocol address associated with the optical cross-connect system, and

where the transmission of low priority data to or from the router is to be preempted by the transmission of the high priority data to or from the router, in response to the failure of the primary router. CHIU and WALTERS do not disclose or suggest one or more features of amended claim 11.

For example, CHIU and WALTER do not disclose or suggest a working port (of an optical cross-connect system) to transmit high priority data to or from a primary router that is external to the optical cross-connect system, where the working port is connected to the router in response to receiving, from the primary router, an out-of-band signal indicating a failure of the primary router, via an Internet Protocol address associated with the optical cross-connect system, as recited by amended claim 11. This feature is similar to (yet possibly of different scope than) features described above with respect to amended claim 1. Without acquiescing in the rejection of previously presented claim 11, Applicant submits that CHIU and WALTER, whether taken alone or in any reasonable combination, do not disclose or suggest the above-identified feature of amended claim 11.

CONCLUSION

In view of the foregoing remarks and proposed amendments, Applicant respectfully requests the Examiner's reconsideration of this application, and the timely allowance of the pending claims. Applicant respectfully requests that the present amendment be entered, because the present amendment places the application in immediate condition for allowance. Moreover, Applicant respectfully requests entry of the present amendment, because the present amendment places

the application in better condition for appeal, should the Examiner continue to contest the patentability of the pending claims.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise which could be eliminated through discussions with Applicant's representative, then the Examiner is invited to contact the undersigned by telephone to expedite prosecution of this application.

As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such assertions (e.g., whether a reference constitutes prior art, reasons to modify a reference or to combine references, assertions as to dependent claims, allegations of Official Notice, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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